



February 22, 2002

Mr. Doug Whitehead
Chief Deputy
Wise County Sheriff's Department
200 Rook Ramsey Drive
Decatur, Texas 76234

OR2002-0843

Dear Mr Whitehead:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158936.

The Wise County Sheriff's Department (the "department") received a request for records pertaining to the department's case number 20138496. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have reviewed the submitted information.

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking for an attorney general decision as to whether requested information is excepted from disclosure. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code §§ 552.301(e)(1)(A)-(D), (2). Section 552.302 provides as follows:

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302. By a letter dated December 6, 2001, you inform us that the department received the instant information request on November 21, 2001. The United States postmark on this letter is December 7, 2001. Additionally, you indicate that, among other documents, you enclose copies of the request for information and "all records gathered, redacted, and filed as a part of" the responsive department case number. However, the materials that you submitted did not include a copy of that request, nor copies of the information at issue. See Gov't Code §§ 552.301(e)(1)(B), (D), (2). Your statutory deadline for submitting a copy of the request for information and information at issue has expired. See *id.* Thus, as the department has failed to comply with section 552.301 in asking for this decision, section 552.302 requires the release of the information unless there is a compelling reason to withhold any of that information from the public. Gov't Code § 552.302; see also *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ).

We find that the department has not demonstrated a compelling reason to withhold the requested information. Because you submitted no copies of the information at issue, we have no basis to conclude that it is excepted from disclosure. Therefore, to the extent that the department possesses information responsive to the request, such information must be released to the requestor. See Gov't Code §§ 552.301(e)(1)(B), (D), (2); .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

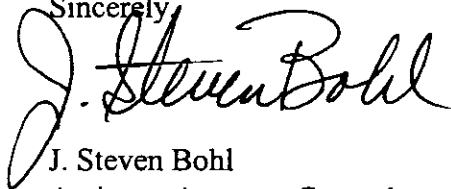
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steven Bohl". The signature is fluid and cursive, with the first name "J." and last name "Bohl" clearly distinguishable.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 158936

Enc: Submitted document

c: Requestor
c/o Doug Whitehead
Wise County Sheriff's Department
200 Rook Ramsey Drive
Decatur, Texas 76234
(w/o enclosure)